

# **ALABAMA BOARD OF NURSING**

## **REGULAR BOARD MEETING**

Fiscal Year 2010-2011

Suite 350, RSA Plaza

770 Washington Ave

Montgomery, Alabama

December 16, 2010

### **I. CALL TO ORDER**

#### **A. Roll Call**

The meeting was called to order at 9:03 a.m. on December 16, 2010. The following Board members were present: Pamela Autrey, PhD., MSN, RN, President; Sylvia Nobles, MSN, CRNP, Vice-President; Sharon Pugh, LPN, Secretary; Melissa Bullard, LPN; Monica Cauley, MSN, RN; Catherine Dearman, RN, PhD; Maggie Hopkins, LPN; Gregory Howard, LPN; Lynda F. LaRue, RN, ADN, CMTE; Martha G. Lavender, RN, DSN; Amy Price, MSN, RN; Gregory D. Pugliese, JD; and E. Laura Wright, MNA, CRNA. Genell Lee, MSN, RN, JD, Executive Officer and Leslie Vinson, Executive Secretary/Recorder were present. Staff members attending portions of the meeting were: Charlene Cotton, MSN, RN, Advanced Practice; Katie Drake-Speer, MSN, RN, Education; Carolyn Morgan, MSN, RN, Practice/Continuing Education; Cathy Boden, MSN, RN, Legal Nurse Consultant; LaDonna Patton, MSN, RN, Legal Nurse Consultant; Dawn Daniel, MSN, RN, Probation Monitor; Mary Ed Davis, MSN, RN, Voluntary Disciplinary Alternative Program; Katie Wetherbee, Assistant General Counsel; and Alice Maples Henley, Deputy Attorney General/General Counsel.

#### **B. Declaration of Quorum**

A quorum was declared with thirteen Board members present.

#### **C. Statement of Compliance with Open Meetings Act**

Prior notice of this meeting was posted on the Secretary of State's web site in accordance with the Alabama Open Meetings Act.

D. Review of Agenda

1. Additions, Modifications, Reordering
2. Adoption of Agenda

**On December 16, Ms. Price moved that the Board adopt the Agenda, as amended. Ms. Wright seconded. Motion carried.**

II. EXECUTIVE OFFICER

A. NCLEX Regional Workshop for Educators

Ms. Lee reported that the National Council of State Boards of Nursing, Inc. (NCSBN) offers a one day workshop for nursing educators with a focus on writing exams at the application level. NCSBN offers the workshop in conjunction with a Board of Nursing. The maximum number of participants is 100, although more can be accommodated if needed. There are sixty-nine programs in the state. The Board could offer 5.4 contact hours. An hour presentation on nursing education program regulations could be added which would increase the contact hours to about 6.6.

The Board could charge a small fee to cover the cost of the facility, lunch and breaks. Due to the number of RN programs whose graduates are not passing NCLEX®, perhaps a one day workshop regarding how to write exam questions is in order.

Ms. Lee provided copies of the information from NCSBN and the regional workshop brochure for the Board's information and review.

The Board reviewed and discussed the information provided.

**On December 16, Dr. Lavender moved that the Board co-sponsor a one day workshop in conjunction with NCSBN for educators. Mr. Howard seconded. Motion carried without objection.**

Ms. Lee reported that she will work on the date and venue for the one day workshop.

B. Evaluation of Executive Officer by Staff

Ms. Lee reported that the Board discussed having some or all staff review the Executive Officer at the time of the annual evaluation by the Board. The first year of the current EO's evaluation, the administrative staff was sent evaluation forms and there were issues with more returns than the number who submitted their evaluations. The Board decided at that point, not to allow staff to have input into the evaluation. Each year the Board discusses whether or not to solicit staff input.

Ms. Lee provided copies of the following articles for the Board's information and review: *360 Degree Introduction*; *360 Degree Questionnaire*; *360 Degree: Good, Bad, and Ugly*; and *Evaluating CEO Performance*.

The Board reviewed and discussed the information provided.

**On December 16, Ms. Cauley moved that the Board table the discussion. Ms. Nobles seconded.**

After discussion, Ms. Cauley withdrew her motion.

**On December 16, Ms. Cauley moved that the Board not pursue the 360 Degree Evaluation. Ms. Hopkins seconded. Motion carried with one opposition (Ms. Price).**

C. Annual Strategic Plan Review

Ms. Lee reported that at the November 2010 meeting, the Board discussed having a retreat in 2011 to identify priorities for the strategic plan but also discussed a retreat for board member development.

The Board's last retreat was in 2009 to develop the FY 2009-2013 strategic plan. A strategic plan review is on each Board agenda. When the budget situation required the cancellation of some of the Board's strategies, the strategic plan was revised. Typically a retreat occurs with a focus on the strategic plan when there is about one year or less remaining in the strategic plan.

The other issue raised was a retreat for Board member development. No specific topics were discussed and if the purpose of a facilitator is for Board members to discuss priorities for the direction of the agency or development of Board members, more specific information is needed in order to plan a retreat.

Ms. Lee provided copies of the FY 2009-2013 strategic plan for the Board's information and review.

After discussion, the Board decided to review the strategic plan at the February 2011 Board meeting. The Board discussed conducting a SWOT analysis at least annually.

Ms. Wright requested a review of how decisions are made about disciplinary cases.

D. Order of Meetings in 2011

Ms. Lee reported that the Board discussed changing the order of meetings for calendar year 2011. During the first six months of calendar year 2011, there will be nursing education program hearings almost each month. The Board decided to hold the nursing education program hearings on Thursday afternoons.

There was discussion about reviewing discipline cases at every meeting rather than having discipline occur only six meetings per year. Some determination of order of the meetings is required for purposes of posting the meetings on the Secretary of State's web site since discipline is handled in executive session. The Board selected the Board meeting dates for 2011 at the November 2010 meeting and those dates have not yet been posted until there is a decision reached on the order of meetings.

The Board discussed the order of meetings.

**On December 16, Ms. Cauley moved that the Board leave the order of meetings as is. Ms. Bullard seconded. Motion carried without objection.**

E. Legislative Issues for 2011

Ms. Lee reported that the regular legislative session for 2011 begins in March. The Board had legislation introduced five consecutive years to provide for law enforcement authority for the Board's investigators. The Black Caucus in the House of Representatives was opposed to the legislation and kept it from progressing to a vote on the floor although it passed the Senate each time. Now that there has been a significant change in the composition of the Senate and House, it may be time to reintroduce the legislation.

The legislation allowing the Board's investigators to have arrest

powers (law enforcement authority) was pursued in order to gain access to databases that are only available to law enforcement authorities. The National Crime Information Center (NCIC) database through the Federal Bureau of Investigation is only available to those entities that have law enforcement authority.

The Board does not have access to the Controlled Substance Prescription Database through the Department of Public Health. Investigations into allegations against licensees of substance use disorders are often hampered by not having ready access to the database. Only those agencies whose licensees prescribe controlled substances or who have law enforcement authority can access the database. If the investigators had law enforcement authority, and could access the database, investigations could proceed much more quickly rather than waiting for responses to subpoenas from multiple pharmacies for prescription profiles.

There is an increased expense associated with the agency being designated a law enforcement agency. Investigators would be required to meet Peace Officers' Standards and Training (POST) standards including required continuing education each year. There are uniform allowances and other per diem expenses that were excluded from prior bills and would be excluded from this bill as well. Three of the five investigators are retired law enforcement officers and would not be required to have additional training. One of the five is an active police officer on his off time and therefore meets POST standards now. One of the five is retired from the New York State Police and may be required to complete a two week refresher course but he has done so in the past without difficulty. Thus, no investigator would be in the position of not being qualified to meet POST requirements.

Although the legislature does not meet until March, authority to proceed would allow time for staff to solicit sponsors in the House and Senate as well as support from other organizations.

The Board also directed staff to investigate the purchase of real estate and an office building. The current Nurse Practice Act does not allow the Board to own real property in its own name. While staff can investigate the costs associated with owning property, unless there is statutory authority to purchase property and own it in the name of the Board, any research would be moot. Another legislative initiative could be to obtain the authority for the Board to purchase and own property. If the legislature denies the authority, then there is no need for research.

The Alabama State Nurses Association (ASNA) plans to have the graduate scholarship bill introduced again this year. The proposed bill has been introduced now for three consecutive years and passed the Senate each time but did not proceed to the floor for a vote in the House although the bill passed out of committee with a favorable report.

There is no confidentiality provision for the Board's investigative records. A bill was introduced previously and it did not go anywhere because the Trial Lawyers Association was opposed. If the Board can succeed in obtaining law enforcement authority, investigative records would be confidential. However, since we have not been successful in five attempts, a parallel effort in attempting to obtain protection for investigative records would be helpful.

Ms. Lee reported that NCIC and LETS cannot be used for background checks.

Ms. Lee provided copies of the prior bill for law enforcement authority, scholarship bill, and the confidentiality of investigative records bill for the Board's information and review.

The Board reviewed and discussed the information provided.

**On December 16, Ms. Wright moved that the Board approve pursuit of law enforcement authority for the Board's investigators during the 2011 regular legislative session. Ms. LaRue seconded. Motion carried without objection.**

**On December 16, Ms. Wright moved that the Board approve pursuit of a bill to grant the Board authority to purchase and own real property in the Board's name during the 2011 regular legislative session. Ms. Pugh seconded. Motion carried without objection.**

**On December 16, Dr. Lavender moved that the Board approve pursuit of a bill to assure confidentiality of the Board's investigative records. Ms. Wright seconded. Motion carried without objection.**

Mr. Howard was not present for the discussion or vote.

F. Reception for Governor Robert Bentley

Ms. Lee reported that at the November Board meeting, a discussion was held about hosting a reception for Governor Robert

Bentley once he is sworn in as Governor. No other details regarding such an event were discussed. State funds cannot be used for these events so the Board would have to determine if individual members are willing to pay for any refreshments, decorations, etc. Having a reception at a time other than a Board meeting would incur more costs for Board travel.

After discussion, the Board decided to invite Governor Robert Bentley to a regularly scheduled Board meeting.

Ms. Pugh and Mr. Howard were not present for the discussion.

### III. ADVANCED PRACTICE

#### A. Approval of Collaborative Practices

Ms. Cotton reported that the roster includes applications for collaborative practice that meet the following criteria: 1) collaborative practice; 2) prescriptive privileges for standard formulary; 3) covering physicians; 4) no remote practice sites; 5) standard CRNP protocol with no additional duties; and 6) physician applicants have met all ABME qualifications.

Ms. Cotton provided copies of the roster of applications for the Board's information and review.

**On December 16, Mr. Pugliese moved that the Board approve the applicants for collaborative practice as listed in the roster. Ms. Hopkins seconded. Motion carried without objection.**

Mr. Howard was not present for the discussion or vote.

#### B. Report of Citizen Advocacy Center Annual Meeting

Ms. Cotton reported on her attendance at the Citizen Advocacy Center Annual Meeting.

Ms. Cotton provided copies of the speaker handouts, reforming scopes of practice, reforming scopes of practice tool kit, reform scope of practice building better mousetrap, consumers in scope of practice reform, frequently asked questions for APRN scope of practice, dental hygienists scope of practice, pharmacists scope of practice, physical therapists scope of practice, psychologists scope of practice, and NCSBN scope of practice legislation for the Board's information.

Mr. Howard was not present for the discussion.

C. House Calls

Ms. Cotton reported that house calls and home visits were not specifically addressed in regulations prior to November 2010. In 2010, Medicare Advantage health plans in Alabama began recruiting nurse practitioners to make in-home assessments of enrolled Medicare Advantage participants by a physician, physician assistant or nurse practitioner. CMS regulations define this activity for all Medicare Advantage plans, and include validation of need for services the patient is receiving under the care of a primary care provider. After discussions with the ABN and BME staff, the recruiting services recognized the requirement to have an approved collaborating physician, as well, for each CRNP.

At the Joint Committee meetings in July, September and November 2010, there were applications from CRNP and physician, in an existing collaborative practice agreement, who had been recruited together to perform in-home assessments as an extension of their collaborative practice. BME staff had advised the recruiters, CRNPs and physicians to submit application to modify their collaborative practice protocols with the addition of house calls for Medicare Advantage patients. ABN staff questioned the necessity of a modified protocol prior to performing Medicare Advantage in-home assessments.

Other applications involved physicians and CRNPs who did not have previous approval for collaborative practice. Several applications did not have acceptable plans for time together in collaboration or for quality review. There were lengthy discussions about collaborative practice applications that initiated a new CRNP and physician relationship, for the purpose of performing Medicare Advantage in-home assessments, without any other clinical practice site.

At the November 2010 meeting of the Joint Committee, the Board of Nursing staff requested clarification on the expectations of the Board of Medical Examiners regarding existing collaborative practice where the physician and CRNP plan to start making Medicare Advantage house calls: Is it necessary for physician and CRNP in an existing approved collaborative practice to submit a modified application prior to making house calls under Medicare Advantage contracts?



The Board of Medical Examiners reviewed the request on November 17, 2010 and notified the ABN staff, "...it is necessary for the physician and nurse practitioner in an existing approved collaborative practice to submit a modified application prior to making house calls under Medicare Advantage contracts; or for any other insurance plans. It is not necessary for the physician and nurse practitioner to make any modification if the nurse practitioner is to make home visits to patients currently in the physician's existing practice."

Ms. Cotton provided copies of the letter from BME for the Board's information and review.

After discussion, the Board directed staff to take the issue back to the Joint Committee and request that they put it in the rules.

Mr. Howard was not present for the discussion.

D. Request for Public Hearing on Chapter 610-X-5, Advanced Practice Nursing—Collaborative Practice

Ms. Lee reported that the Board approved amendments to ABN Administrative Code, Chapter 610-X-5, Advanced Practice Nursing—Collaborative Practice in October. The proposed amendments were published in the November 30, 2010 *Alabama Administrative Monthly*. In addition, the proposed rules were posted on the Board's web site as well as being sent to all CRNPs and CNMs on the Board's list serve. The deadline for public comments is January 4, 2011.

In the notice for the public comment period, a public hearing was offered if a request was received in writing no later than December 10, 2010. On December 15, 2010, two requests came in for a public hearing. The reason December 10, 2010 was given as a deadline was so that if a public hearing was requested, it could be scheduled for the December 16, 2010 Board meeting. Since the requests were made on December 15, there was no time to schedule the hearing for December 16.

The Board needs to determine if a public hearing should be scheduled. The public hearings are normally scheduled during a board meeting for the convenience of the Board and also to save money related to travel. The Board is not required to be present and a public hearing could be scheduled with the Executive Officer conducting the hearing. A court reporter is required to transcribe

the comments and the Board would then see the transcript of the public hearing.

It is unclear from the two requests what the issues are but since two individuals have asked for a public hearing, it would likely be in the Board's best interest to try accommodate the requests. If the public hearing is scheduled, the Board should determine if attendance by Board members is required.

**On December 16, Ms. Nobles moved that the Board grant the request for a public hearing on ABN Administrative Code, Chapter 610-X-5, Advanced Practice Nursing—Collaborative Practice. Ms. Price seconded. Motion carried without objection.**

Ms. Lee reported that she will try to schedule the public hearing the week of December 27.

Mr. Howard was not present for the discussion or vote.

#### IV. EDUCATION

##### A. Institutional Accreditation and Other Nursing Education Program Issues

Ms. Drake-Speer reported that during the course of posting of proposed changes to the nursing education program rules, a program from Florida contacted the Board office to ask about institutional accreditation. Pensacola Christian College is not accredited by any organization. The program is, however, approved by the Florida Board of Nursing. There have been endorsement applicants who have been approved for licensure based on the Florida Board's approval of the program. Staff has never looked at institutional accreditation from those endorsing from other states.

The Board's regulations of nursing education programs do not require the nursing program to have national accreditation. The regulations do require that the institution offering the program be accredited by an organization recognized by the US Department of Education. The question now arises what to do if there are applicants for licensure who graduated from an institution that is not accredited. In preparation for raising the question with the Board, a survey was sent to all jurisdictions via the NCSBN web

survey process. Additional questions were asked about specific designated hours for theory classes and clinical.

Ms. Drake-Speer provided copies of the nursing education program survey summary for the Board's information and review.

The Board reviewed and discussed the survey summary.

**On December 16, Mr. Pugliese moved that the Board enforce the rules and regulations and require all applicants to graduate from an institution that is accredited by an organization recognized by the US Department of Education. Ms. Pugh seconded. Motion carried without objection.**

Mr. Howard was not present for the discussion or vote. Ms. Cauley was not present for the vote.

Ms. Lee reported the Board needs to think about a rule that specifies the length of nursing education programs. Further discussion will occur after the nursing education annual report results have been reviewed.

**B. Closure of Practical Nursing Program – Snead State Community College**

Ms. Drake-Speer reported that on May 20, 2004, the Board voted to approve Snead State Community College for implementation of a career ladder RN / PN nursing program (Associate Degree with a practical nursing option). On October 1, 2010, Ms. Lee received a letter regarding the PN program from Amy Langley, Director of Health Sciences requesting an inactive status. The rules do not allow for an inactive status.

Ms. Langley was provided directions that Snead State Community College needed to comply with ABN Administrative Code, Rule 610-X-3-07 Closing a Program. On November 19, 2010, Ms. Langley submitted a communication to Ms. Lee via electronic mail demonstrating compliance with Rule 610-X-3-.07.

Ms. Drake-Speer provided copies of the request from Snead State Community College to close the PN program for the Board's information and review.

**On December 16, Ms. Wright moved that the Board approve the request from Snead State Community College to close the**

**practical nursing program effective August 10, 2011. Ms. Pugh seconded. Motion carried without objection.**

Mr. Howard was not present for the discussion or vote.

C. Virginia College-Birmingham: Deficiency with Mandated Faculty: Student Ratios

Ms. Drake-Speer reported that Virginia College–Birmingham (VCB) ADN Program Director, Ronda Bush notified the nursing consultant for nursing education programs that for the 2009-2010 Nursing Education Annual Report she could not affirm as required by the report that VCB complied with ABN Administrative Code, Rule 610-X-3-.02 (11)(d), which requires that the faculty to student ratio in licensed hospitals that provide inpatient acute care shall not exceed 1:8 during clinical learning experiences.

Staff requested submission of an explanation and documentation related to this infraction. A preview of the document shows that nine students were in clinical at Fairview Health and Rehab on five clinical days; and nine to ten students were in clinical at Cooper Green Mercy Hospital on five clinical days.

Ms. Bush indicates that she was not able to provide sufficient oversight of the clinical arrangement due to time constraints related to working in a proprietary environment. For various reason Ms. Bush has ended her employment with VCB as of November 19, 2010. The interim program director is Michelle Stubbs, RN.

Ms. Drake-Speer provided copies of the Report of Deficiency for the Board's information and review.

**On December 16, Mr. Pugliese moved that the Board approve a Notice of Deficiency to Virginia College-Birmingham ADN Program for failure to comply with ABN Administrative Code, Rule 610-X-3-.02(11)(d) and require submission of evidence within thirty days of the notice that the program is in compliance with the required standard. Ms. Price seconded. Motion carried without objection.**

Mr. Howard was not present for the discussion or vote.

Dr. Autrey requested to discuss the 1:8 ratio at a future Board meeting.

The Board directed the staff to invite Virginia College-Birmingham to a Board meeting to discuss all the issues with the program.

V. LEGAL DIVISION

A. VDAP Agreement Shells

Ms. Wetherbee reported that in June 2010, the Board reviewed and accepted proposed changes to the VDAP Rules, found in ABN Administrative Code, Chapter 610-X-13. These rules became effective on September 24, 2010. It is proposed that the VDAP Agreement Shells be revised to: 1) use language and terms consistent with the revised VDAP rules; 2) reflect employment restrictions and requirements already approved by the Board; 3) recognize the revised instances in which a VDAP agreement may be terminated and/or a VDAP participant may be terminated from the program; 4) provide the Board and/or staff greater flexibility to monitor a VDAP participant's use of controlled substances with the inclusion of a provision requiring a VDAP participant, at the request of the Board, to provide the Board with pharmacy prescription profiles; 5) require a VDAP participant to provide a copy of the agreement to the board of nursing in each state in which the participant holds a license; and 6) update certain stipulated terms for clarity, as well as address circumstances that have arisen in the past that are not addressed by the current shell.

Ms. Wetherbee provided copies of the proposed mental health shell; the current mental health shell, proposed substance use disorder shell, and the current substance use disorder shell for the Board's information and review.

The Board reviewed and discussed the proposed shells.

**On December 16, Mr. Pugliese moved that the Board approve the proposed Voluntary Disciplinary Alternative Program Agreement shells. Mr. Howard seconded. Motion carried without objection.**

VI. NEXT MEETING DATE: January 20-21, 2011, Suite 350, RSA Plaza

VII. OTHER

- Ms. Lee reported that 55,230 RNs have renewed as of December 16.

2,028 renewed late.

- 328 renewed retired but the staff sent emails to 169 of those asking if it was their intent to retire the license.
- Ms. Lee reported that two nurses who renewed late filed a dispute with the credit card company. They were advised that the Board would pursue disciplinary action if they cancelled the transaction.
- Ms. Wright reported that she is a Ph.D. candidate.
- Ms. Lee reported that Board member orientation is scheduled for January 6, 2011.
- Ms. Lee reported that the Board will get new laptops on January 21 and will have a quick orientation for the new software.

#### VIII. BOARD MEETING DEBRIEFING

#### IX. ADJOURNMENT

The meeting adjourned at 1:21 p.m. on December 16, 2010.

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Pamela Autrey, President

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Sharon Pugh, Secretary

Submitted by: \_\_\_\_\_  
Leslie Vinson, Recorder  
12/16/2010